

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

LANCE R. MARTIN.

Case No. 1:20-cv-00605-NONE-SAB

Plaintiff,

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS; DENYING  
PLAINTIFF'S APPLICATION TO PROCEED  
WITHOUT PREPAYMENT OF FEES; AND  
DISMISSING ACTION AS FRIVOLOUS

C. PFZIFER, et al.,

(Doc. No. 5)

Lance R. Martin (“Plaintiff”) is appearing *pro se* in this civil rights action pursuant to 42 § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 § 636(b)(1)(B) and Local Rule 302.

On May 4, 2020, the assigned magistrate judge filed a findings and recommendations recommending that the complaint be dismissed without leave to amend as frivolous and that plaintiff's application to proceed *in forma pauperis* without prepayment of fees be denied. (Doc. No. 11) The findings and recommendations were served on plaintiff and contained notice that plaintiff had thirty days to file formal objections. Plaintiff did not file formal objections. On May 20, 2020, plaintiff filed a notice of appeal that was processed to the U.S. Court of Appeals for the Ninth Circuit. (Doc. No. 6.)

In accordance with 28 U.S.C. § 636(b)(1)(C), this court has conducted a *de novo* review case. Having carefully reviewed the entire file, the court finds the findings and

1 recommendations to be supported by the record and by proper analysis. Plaintiff, who is no  
2 longer in custody, alleges that defendants—all of whom are employees at state prisons where he  
3 once was incarcerated—are using electronic devices to control citizens around plaintiff in  
4 various ways, including by causing those citizens to adulterate plaintiff's food, drink, and water.  
5 (See generally Doc. No. 1.) The findings and recommendations reasonably concluded that  
6 plaintiffs' claims were not cognizable or grounded in reality and should be dismissed.

7 To the extent plaintiff's May 20, 2020 notice of appeal was intended by plaintiff to  
8 constitute objections to the pending findings and recommendations, the notice of appeal contains  
9 no information or argument that would justify departure from those recommendations.<sup>1</sup>

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. The findings and recommendations, filed May 4, 2020 (Doc. No. 5), are  
12 **ADOPTED IN FULL;**
- 13 2. Plaintiff's application to proceed without prepayment of fees is DENIED;
- 14 3. The complaint in this matter is DISMISSED WITHOUT LEAVE to amend as  
15 frivolous;
- 16 4. The Clerk of the Court is DIRECTED to assign this matter to a United States  
17 district judge for the purposes of closing this case and to CLOSE THIS CASE

18 IT IS SO ORDERED.

19 Dated: June 17, 2020

  
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UNITED STATES DISTRICT JUDGE

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22 <sup>1</sup> Plaintiff's notice of appeal was filed before the undersigned reviewed the magistrate judge's  
23 findings and recommendations. Generally, "the filing of a notice of appeal divests a district  
24 court of jurisdiction over those aspects of the case involved in the appeal." *Stein v. Wood*, 127  
25 F.3d 1187, 1189 (9th Cir. 1997). However, there is an exception to the general rule when the  
appeal is frivolous. *Marks v. Clarke*, 102 F.3d 1012, 1017 n. 8 (9th Cir. 1996) (citations  
omitted). Here, plaintiff did not appeal from an appealable final order, so his appeal is frivolous.  
See 28 U.S.C. § 1291; see also *Guymon v. Nasset*, No. CV 16-68-M-DLC-JCL, 2016 WL  
5475971, at \*1 (D. Mont. Sept. 29, 2016) (finding an appeal from a magistrate judge's findings  
and recommendations noticed to the Ninth Circuit before the findings and recommendations  
were addressed by the district judge to be frivolous). This order will also serve as certification  
26 that plaintiff's appeal is frivolous.